

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Johann Magg et al.
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Group Art Unit: 3742
Confirmation No.: 2937
Examiner: Reginald Alexander
Title: COFFEE MACHINE COMPRISING A DRAWER FOR
SUPPLYING COFFEE PADS

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APPEAL BRIEF

Pursuant to 37 CFR §41.37, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR §41.20(b)(2).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1-7 are cancelled. Claims 8-28 are pending in this application. Claims 12 and 15-23 are allowed. The final rejection of claims 8-11, 13, 14 and 24-28 is being appealed. Claims 8 and 12 are independent.

(4) STATUS OF AMENDMENTS

The Final Office Action dated April 27, 2010, rejects claims 8-11, 13, 14 and 24-28 and allows claims 12 and 15-23. No Amendments are outstanding. Appellants filed a Notice of Appeal on June 28, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 8, is directed to a coffee machine (page 5, line 5; reference number 110, Figs. 1a, 1b) comprising: a housing (page 5, line 8; reference number 114, Figs. 1a, 1b) and a brewing chamber (page 6, line 9; reference number 330, Figs. 3a, 3b) disposed within the housing; and a drawer (page 5, line 28; reference number 210, Figs. 2a, 2b) for supplying coffee pads (page 1, line 5) into the

brewing chamber, the drawer being removably and detachably connected to the housing (page 3, lines 1-5).

A second exemplary embodiment, as defined by, for example, independent claim 12, is directed to a coffee machine (page 5, line 5; reference number 110, Figs. 1a, 1b) comprising: a housing (page 5, line 8; reference number 114, Figs. 1a, 1b) and a brewing chamber (page 6, line 9; reference number 330, Figs. 3a, 3b) disposed within the housing; and a drawer (page 5, line 28; reference number 210, Figs. 2a, 2b) for supplying coffee pads (page 1, line 5) into the brewing chamber, the drawer being removably and detachably connected to the housing (page 3, lines 1-5), wherein the drawer can be inserted substantially horizontally into a niche of the coffee machine (page 5, lines 10-12; reference number 120, Fig. 1b) and the drawer has at least one opening (page 5, line 31; reference number 222, Fig. 2b) in its base (page 5, line 30; reference number 226, Fig. 2b) which, in the closed position of the drawer, is at least partially surrounded by at least one substantially vertically displaceable retaining device (page 5, line 17; reference number 126, 128, Fig. 1b) so that a coffee pad retainer (page 6, line 9, 22; reference number 220, 320, Figs. 3a, 3b) can be raised by the retaining device and the brewing chamber is closed by raising the coffee pad retainer (page 6, line 12).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 8-11 and 24-28 are unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 3,260,190 (the Levinson reference)
- B) Whether claims 8-11 and 14 are unpatentable under 35 U.S.C. §102(a) over U.S. Patent No. 6,904,840 (the Pfcifer reference)
- C) Whether claim 13 is unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,904,840 (the Pfcifer reference) in view of U.S. Patent No. 6,510,783 (the Basile reference)

(7) ARGUMENT

- A) Claims 8-11 and 24-28 are patentable under 35 U.S.C. §102(b) over U.S. Patent No. 3,260,190 (the Levinson reference)

The Office Action rejects claims 8-11 and 24-28 under 35 U.S.C. §102(b) over the Levinson reference. Applicants respectfully traverse this rejection.

- i) Claims 8-11, 24, 25 and 28

Claim 8 includes the feature of a drawer for supplying coffee pads into the brewing chamber. In contrast, Levinson does not disclose a drawer that supplies coffee pads into a brewing chamber. According to statements made in the February 10, 2010, telephone interview, the Office Action considers the open space inside the device of Levinson as the claimed brewing chamber. Applicants respectfully disagree that the open space inside the device of Levinson can be a brewing chamber because the brewing does not take place in this open space. The brewing in Levinson takes place inside can 5 itself. As a result, if Levinson did disclose a brewing chamber, it would be can 5. Since can 5 is the only area in Levinson that can reasonably be considered a brewing chamber, Levinson does not supply coffee pads into a brewing chamber. This is because the Office Action defined coffee pad (can 5) of Levinson is the brewing chamber of Levinson and a brewing chamber cannot be inserted into itself.

Claims 9-11, 24, 25 and 28 depend from claim 8.

In view of the foregoing, Applicants respectfully submit that Levinson does not disclose each and every feature of claims 8-11, 24, 25 and 28, and therefore rejection under 35 USC §102(b) is inappropriate.

ii) Claims 26 and 27

Claims 26 and 27 include the feature of at least one projection on a bottom side of the retainer cover, the projection being for pressing a coffee pad against the coffee pad retainer. Applicants respectfully submit that the Office Action defined projections (piercing elements 28, 28') of Levinson pierce can 5, they do not press can 5 against anything. Lower platen 27 of Levinson presses can 5 against upper platen 26.

In view of the foregoing, Applicants respectfully submit that Levinson does not disclose each and every feature of claims 26 and 27, and therefore rejection under 35 USC §102(b) is inappropriate.

Applicants respectfully request reversal of this rejection.

B) Claims 8-11 and 14 are patentable under 35 U.S.C. §102(a) over U.S. Patent No. 6,904,840 (the Pfeifer reference)

The Office Action rejects claims 8-11 and 14 under 35 U.S.C. §102(a) over the Pfeifer reference. Applicants respectfully traverse this rejection.

i) Claims 8, 9 and 11

The applied reference does not teach or suggest the features of the claimed invention, including a drawer for supply coffee pads into a brewing chamber, the drawer being removably and detachably connected to the housing. These features are important for a user to be able to remove a used coffee pad without touching the coffee pad.

Further, considering the claimed invention as a whole, providing the removable and detachable nature of the drawer enables removing the coffee pad from the drawer without the user having to touch the coffee pad. Pfeifer does not teach or suggest a removable and detachable drawer because pod holder 72 of Pfeifer can be removed from tray assembly 16 (the feature of Pfeifer applied by the examiner to correspond to the claimed drawer) (see col.

6, lines 6-8). As a result, Pfciſer does not teach or suggest any reason for removing tray assembly 16 from the coffee machine.

The Office Action alleges that “the drawer is guided and supported by rails and guide wheels which allow for a fluid movement forward and backward. A removal of the rails from the guide wheels would allow for removal of the drawer from the housing. It should also be noted that the drawer could be manually removed and placed within the housing by some form of force if need be.” Applicants respectfully submit that the allegation that the drawer could be manually removed and placed within the housing by some form of force stretches the interpretation of this language well beyond any broadest reasonable interpretation.

“During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification. . . . The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. . . . This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say. . . .”

“‘PLAIN MEANING’ REFERS TO THE ORDINARY AND CUSTOMARY MEANING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART”

“[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. . . . It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the ‘ordinary’ and the ‘customary’ meaning of the terms in the claims.”

(Emphasis original, M.P.E.P. § 2111 and 2111.01).

Applicants respectfully submit that the allegation that the drawer could be manually removed and placed within the housing by some form of force stretches the interpretation of the claim language well beyond any broadest reasonable interpretation and certainly beyond any plain meaning of the terms, such as, for example, “removably connected” and “detachably connected” as interpreted by those skilled in the art.

To allege that the drawer could be manually removed and placed within the housing by some form of force stretches the meaning of these terms beyond the plain meaning in a manner which renders the meaning inconsistent with the specification as it would have been read and interpreted by one of ordinary skill in the art. The specification describes an exemplary embodiment of a coffee machine having a slide-in area 120 into which a drawer 122 can be slid. The drawer is positioned in the coffee machine in a detachable manner so that the used coffee pad can be removed from the coffee machine together with the drawer to enable a user to remove the coffee pad from the coffee machine without touching the coffee pad. One of ordinary skill in the art would interpret the claim language to mean that the drawer can be removed from the coffee machine without breaking the drawer or the coffee machine. One of ordinary skill in the art would not interpret the claim language so broadly as to read upon the tray assembly 16 of Pfeifer. Pfeifer does not teach or suggest that tray assembly 16 is made to be removable without breaking it or the coffee machine. Applicants respectfully submit that one of ordinary skill in the art would not have interpreted the claim language so broadly as to read upon a tray or drawer that is not made to be removable and replaceable in the normal use of the coffee machine and, in fact, any such interpretation would be inconsistent with the specification as understood by one of ordinary skill in the art. The allegation that tray assembly 16 corresponds to the claimed drawer stretches the interpretation of this term well beyond any reasonable interpretation and certainly beyond the plain and/or ordinary and customary meaning that would be applied to the terms by one of ordinary skill in the art.

Claims 9 and 11 depend from claim 8.

In view of the foregoing, Applicants respectfully submit that Pfeifer does not disclose each and every feature of claims 8, 9 and 11, and therefore rejection under 35 USC §102(a) is inappropriate.

ii) Claim 10

The applied reference does not teach or suggest the features of the claimed invention, including ends of continuations that are at least slightly beveled with respect to the direction of insertion for centering insertion of the drawer.

Regarding claim 10, the Office Action does not indicate what part of Pfeifer corresponds to the claimed ends of the continuations that are at least slightly beveled with respect to the direction of insertion for centering insertion of the drawer. Because tray assembly 16 is not removed in normal use of the coffee machine, it is unclear why any beveling would be beneficial. This is particularly true for beveling in the direction of insertion since tray assembly 16 does not need to be reinserted into an opening. It is noted that the angled portions of rails 82, 84 shown in Fig. 7 are not in “the direction of insertion” and are not for “centering the insertion of the drawer”, as required by claim 10.

In view of the foregoing, Applicants respectfully submit that Pfeifer does not disclose each and every feature of claim 10, and therefore rejection under 35 USC §102(a) is inappropriate.

iii) Claim 14

The applied reference does not teach or suggest the features of the claimed invention, including and a coffee pad retainer mounted telescopically on the drawer.

Regarding claim 14, the Office Action provides nothing to support the rejection. Applicants respectfully request that some direction be given as to what part of Pfeifer is being relied upon to support this rejection.

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (37 CFR §1.104(c)(2)).

Further, claim 14 includes the feature of a coffee pad retainer mounted telescopically on the drawer such that the coffee pad retainer can be moved telescopically from a first position in which the brewing chamber is open, to a second position in which the brewing chamber is closed. Applicants respectfully submit that nothing in Pfeifer is disclosed as moving telescopically. Further, the Office Action has taken the position that the open area inside the device of Pfeifer corresponds to the claimed brewing chamber. Based on this position, there is nothing in Pfeifer that is mounted on the drawer that is moved to a position in which the brewing chamber is closed.

In view of the foregoing, Applicants respectfully submit that Pfeifer does not disclose each and every feature of claim 14, and therefore rejection under 35 USC §102(a) is inappropriate.

Applicants respectfully request reversal of this rejection.

- C) Claim 13 is patentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,904,840 (the Pfeifer reference) in view of U.S. Patent No. 6,510,783 (the Basile reference)

The Office Action rejects claim 13 under 35 U.S.C. §103(a) over the Pfeifer reference in view of the Basile reference. Applicants respectfully traverse this rejection.

i) Claim 13

Pfeifer does not teach or suggest the feature of a drawer for supplying coffee pads into a brewing chamber, the drawer being removably and detachably connected to the housing as recited by independent claim 8, from which claim 13 depends.

Basile does not remedy the deficiencies of Pfeifer.

Indeed, the Examiner does not allege that Basile teaches or suggests the feature of a drawer for supplying coffee pads into a brewing chamber, the drawer being removably and detachably connected to the housing as recited by independent claim 8.

Further, the Office Action simply states that Basile discloses a drawer for a coffee machine, the drawer having a base which includes a central opening surrounded by smaller openings of a screen member. Applicants respectfully submit that Basile does not teach or suggest either a central opening or further openings in the bottom of a drawer (see col. 7, lines 14-22 and Fig. 2). Applicants respectfully request that some direction be given as to what parts of Basile are being relied upon to support this rejection.

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (37 CFR §1.104(c)(2)).

In view of the foregoing, Applicants respectfully submit that the combination of Pfeifer and Basile does not teach or suggest the features of claim 13, and therefore rejection under 35 USC §103(a) is inappropriate.

Applicants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1-7. (Canceled)

8. (Rejected) A coffee machine comprising:
a housing and a brewing chamber disposed within the housing; and
a drawer for supplying coffee pads into the brewing chamber, the drawer being removably and
detachably connected to the housing.

9. (Rejected) The coffee machine according to claim 8, wherein the drawer has guide
continuations which project substantially in the direction of insertion and which engage in
guides of the housing of the coffee machine for mounting the drawer in an open position.

10. (Rejected) The coffee machine according to claim 9, wherein the ends of the
continuations are at least slightly bevelled with respect to the direction of insertion for
centering insertion of the drawer.

11. (Rejected) The coffee machine according to claim 8, wherein in a closed position,
the drawer abuts at least partly positively against the housing.

12. (Allowed) A coffee machine comprising:
 - a housing and a brewing chamber disposed within the housing; and
 - a drawer for supplying coffee pads into the brewing chamber, the drawer being removably and detachably connected to the housing,
wherein the drawer can be inserted substantially horizontally into a niche of the coffee machine and the drawer has at least one opening in its base which, in the closed position of the drawer, is at least partially surrounded by at least one substantially vertically displaceable retaining device so that a coffee pad retainer can be raised by the retaining device and the brewing chamber is closed by raising the coffee pad retainer.
13. (Rejected) The coffee machine according to claim 8, wherein in addition to a central opening, further openings are provided in the bottom of the drawer.
14. (Rejected) The coffee machine according to claim 8, wherein a coffee pad retainer is mounted telescopically on the drawer such that the coffee pad retainer can be moved telescopically from a first position in which the brewing chamber is open, to a second position in which the brewing chamber is closed.
15. (Allowed) The coffee machine according to claim 12, wherein the drawer has guide continuations which project substantially in the direction of insertion and which engage in guides of the housing of the coffee machine for mounting the drawer in an open position.

16. (Allowed) The coffee machine according to claim 15, wherein the ends of the continuations are at least slightly bevelled with respect to the direction of insertion for centering insertion of the drawer.

17. (Allowed) The coffee machine according to claim 12, wherein in a closed position, the drawer abuts at least partly positively against the housing.

18. (Allowed) The coffee machine according to claim 12, wherein in addition to a central opening, further openings are provided in the bottom of the drawer.

19. (Allowed) The coffee machine according to claim 12, wherein a coffee pad retainer is mounted telescopically on the drawer.

20. (Allowed) The coffee machine according to claim 12, further comprising a retainer cover that forms an upper region of the brewing chamber.

21. (Allowed) The coffee machine according to claim 20, wherein the retainer cover is made of an elastic material.

22. (Allowed) The coffee machine according to claim 20, further comprising at least one projection on a bottom side of the retainer cover, the projection being for pressing a coffee pad against the coffee pad retainer.

23. (Allowed) The coffee machine according to claim 20, further comprising a plurality of projections on a bottom side of the retainer cover, the projections being for pressing a coffee pad against the coffee pad retainer.

24. (Rejected) The coffee machine according to claim 8, further comprising a retainer cover that forms an upper region of the brewing chamber, and
a coffee pad retainer that forms a lower region of the brewing chamber.

25. (Rejected) The coffee machine according to claim 24, wherein the retainer cover is made of an elastic material.

26. (Rejected) The coffee machine according to claim 24, further comprising at least one projection on a bottom side of the retainer cover, the projection being for pressing a coffee pad against the coffee pad retainer.

27. (Rejected) The coffee machine according to claim 24, further comprising a plurality of projections on a bottom side of the retainer cover, the projections being for pressing a coffee pad against the coffee pad retainer.

28. (Rejected) The coffee machine according to claim 24, further comprising a substantially vertically displaceable retaining device that raises the coffee pad retainer to close the brewing chamber.

EVIDENCE APPENDIX

None

Attorney Docket No. 2004P00164WOUS

RELATED APPEALS APPENDIX

None